

WC 05-211

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FCC/MELLON

JUN 10 2005

June 10, 2005

DATE STAMP & RETURN

Federal Communications Commission
Wireline Competition Bureau – CPD – 214 Appls.
P.O. Box 358145
Pittsburgh, PA 15251-5145

Re: In the Matter of First Communications LLC Application for Consent to Transfer Of
Control of a Company Holding an International Authorizations and a Blanket Domestic
Authorization Pursuant to Section 214 of the Communications Act of 1934, as Amended

Enclosed for filing, on behalf of First Energy Communications LLC, please find an original and five copies of the above-captioned application. The Parties request authority for the transfer of assets of Akron Canton Communications, Inc. to First Communications LLC. This application is being filed concurrently with the International Bureau via its IBFS electronic program.

Remittance Form 159 and a check to cover the \$895 filing fee are appended. An additional copy of this filing for date-stamp and return has been provided as well. If there are any questions regarding this application, please contact Karly Baraga at (202) 955-9869. Thank you in advance for your assistance with this matter.

Sincerely,



Karly E. Baraga

Enclosures

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

Approved by OMB
3060-0589
Page 1 of 1

(1) LOCK BOX #			
SECTION A - PAYER INFORMATION			
(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card) Kelley Drye & Warren LLP		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$895.00	
(4) STREET ADDRESS LINE NO. 1 1200 19th Street NW			
(5) STREET ADDRESS LINE NO. 2 Suite 500			
(6) CITY Washington		(7) STATE DC	(8) ZIP CODE 20036
(9) DAYTIME TELEPHONE NUMBER (include area code) 202-955-9869		(10) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(11) PAYER (FRN) 0006-5547-78			
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C) COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(13) APPLICANT NAME First Communications LLC			
(14) STREET ADDRESS LINE NO. 1 3340 W. Market Street			
(15) STREET ADDRESS LINE NO. 2			
(16) CITY Akron		(17) STATE OH	(18) ZIP CODE 44333
(19) DAYTIME TELEPHONE NUMBER (include area code) 330-835-2272		(20) COUNTRY CODE (if not in U.S.A.)	
FCC REGISTRATION NUMBER (FRN) REQUIRED			
(21) APPLICANT (FRN) 0003-7644-87			
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET			
(23A) CALL SIGN/OTHER ID	(24A) PAYMENT TYPE CODE CUT	(25A) QUANTITY 1	
(26A) FEE DUE FOR (PTC) \$895.00	(27A) TOTAL FEE \$895.00		
(28A) FCC CODE 1		(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID	(24B) PAYMENT TYPE CODE	(25B) QUANTITY	
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE		
(28B) FCC CODE 1		(29B) FCC CODE 2	
SECTION D - CERTIFICATION			
I, <u>Kelley Drye</u> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge and belief.			
SIGNATURE <u>Kelley Drye</u>		DATE <u>06/10/05</u>	
SECTION E - CREDIT CARD PAYMENT INFORMATION			
MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____			
ACCOUNT NUMBER _____		EXPIRATION DATE _____	
I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.			
SIGNATURE _____		DATE _____	

SEE PUBLIC BURDEN ON REVERSE

FCC FORM 159

FEBRUARY 2003 (REVISED)

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
FIRST COMMUNICATIONS LLC)	Docket No. _____
)	
)	
Application for Consent to Transfer)	
of Control of a Company Holding)	
International Authorizations and a Blanket)	
Domestic Authorization Pursuant)	
to Section 214 of the Communications Act)	
of 1934, as Amended)	

APPLICATION

First Communications LLC ("First Communications" or "Applicant") by its attorneys, hereby request authority pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. §214 (the "Act"), and Sections 63.04 and 63.24(e) of the Commission's Rules, 47 CFR §§ 63.04, 63.24(e), for the transfer of control of Akron Canton Communications, Inc. ("Akron Canton") to First Communications.

Pursuant to the terms of an Asset Purchase Agreement ("Agreement") dated June 9, 2005, among Akron Canton, and First Communications, as described in more detail below, First Communications will acquire substantially all of the assets of Akron Canton related to its communications business in Ohio. Accordingly, First Communications requests that the Commission approve the transfer of assets, including customers, of Akron Canton to First Communications. The proposed Transaction is not expected to result in any loss or impairment of service to any of the Akron Canton customers. Customers will continue to receive their existing services at the same rates,

terms and conditions and any future changes in the rates, terms and conditions of service will be made consistent with Commission requirements. The only change will be in the customers' service provider.

Pursuant to Section 63.04(b) of the Commission's Rules, 47 C.F.R. § 63.04(b), the Applicant is filing a combined application for the proposed transfer of assets of Akron Canton, an entity that holds authority under Section 214 of the Act to provide domestic and international telecommunications services, from Akron Canton to First Communications. First Communications also holds authority under Section 214 of the Act to provide domestic and international telecommunications services.¹ In connection with the transfer of assets, the Applicant provides below the information required by Section 63.24(e)(2) of the Commission's Rules, 47 C.F.R. § 63.24(e)(2). Exhibit A provides the additional information requested by Section 63.04(a)(6) through (a)(12) of the Commission's Rules, 47 C.F.R. § 63.04(a)(6)-(12), in connection with the transfer of assets of Akron Canton, as a holder of domestic Section 214 authority.

First Communications respectfully requests streamlined treatment of this Application pursuant to Sections 63.03 and 63.12 of the Commission's Rules, 47 C.F.R. §§ 63.03 and 63.12. This Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) of the Commission's Rules, 47 C.F.R. § 63.03(b)(2)(i), because (a) after the proposed transaction, First Communications will have market share in the interstate, interexchange market of substantially less than 10 percent, and will provide competitive services exclusively in areas served by a dominant local carrier not a party to the transaction, and (b) First Communications and Akron Canton are not currently

¹ See File No. ITC-ASG-20011001-00509, granted Nov. 2, 2001, in Report No. TEL-00460.

dominant with respect to any domestic service, and will not become dominant with respect to any domestic service after consummation of the proposed transaction. This Application also qualifies for streamlined treatment under Section 63.12 because (a) First Communications is not affiliated with a dominant foreign carrier, (b) First Communications will not become affiliated with any foreign carrier as a result of the proposed transaction, and (c) none of the other provisions contained in Section 63.12(c) of the Commission's Rules, 47 C.F.R. § 63.12, apply.

Immediately following the Transaction, Akron Canton customers will continue to receive the same services at the same rates, terms and conditions as at present. In connection with that Transaction, First Communications respectfully requests approval of this Application as soon as possible.

I. PARTIES TO THE TRANSACTION

A. First Communications [FRN 0003-7644-87].

First Communications is an Ohio limited liability company based in Akron, Ohio. Founded in 1984, First Communications is a common carrier that provides local, private line and long distance services to both business and residential customers in several states in the U.S. Currently, First Communications provides telecommunications services to approximately 70,000 customers, located primarily in Florida, Ohio, Indiana and Michigan. First Communications' services include, in addition to traditional local and long distance services, toll-free services, conference calling packages, calling cards, prepaid calling cards, Internet access, and dedicated and private line services. First Communications' telecommunications services are provided primarily on a resale basis

using facilities and switches that are owned and operated by other telecommunications carriers.

B. Akron Canton [FRN 0004-3426-06].

Akron Canton is an Ohio corporation headquartered at 2930 Edison Street, NW, Suite C, Uniontown, OH 44685. Akron Canton was founded in 1993 and provides local and long distance telecommunications services primarily to customers in the Akron/Canton Ohio area. Akron Canton has authority to provide local exchange and intrastate interexchange telecommunications services in Ohio. Akron Canton operates under the names "ACCtion Communications", "Akron Canton Communications" and "Akron Canton Connection." Akron Canton provides domestic and international telecommunications services pursuant to authorizations granted by the Federal Communications Commission ("FCC").

II. DESCRIPTION OF THE TRANSACTION

First Communications and Akron Canton have reached an Agreement providing for First Communications' acquisition of substantially all of the assets of Akron Canton, including Akron Canton's customers, which are to be transferred immediately to First Communications.² First Communications has previously been providing the underlying network transmission service to Akron Canton and its customers. On or about July 15, 2005, First Communications will acquire Akron Canton's customer base and provide local and long distance telecommunication services to those customers directly.

² A copy of the Agreement will be provided upon request.

The proposed transfer of customers from Akron Canton to First Communications will have no adverse impact on customers. The Akron Canton customers will continue to receive their existing services at the same rates, terms and conditions that they have prior to the transfer and any future changes in the rates, terms and conditions of service will be made consistent with Commission requirements. To ensure a seamless transition and avoid customer confusion or inconvenience, First Communications will provide advance written notice to the affected customers at least thirty (30) days prior to the transfer, explaining the change in service provider in accordance with applicable Commission and state requirements for changing a customer's presubscribed carrier. First Communications will file the required notice with the Commission in CC Docket No. 00-257 pursuant to Section 64.1120 of the Commission's Rules, 47 C.F.R. § 64.1120, to comply with the Commission's slamming requirements.

III. PUBLIC INTEREST STATEMENT

The transfer of assets from Akron Canton to First Communications is in the public interest. The transaction will strengthen First Communications and better ensure that it remains a viable long-term competitor in the telecommunications marketplace. Given the difficulties with which the competitive telecommunications industry is now struggling, the creation of a financially stronger telecommunications competitor would benefit consumers in Ohio.

The Applicant emphasizes that, following the transfer, the former Akron Canton customers will continue to receive services from an experienced and qualified carrier, which services will be consistent with the quality of services currently provided by Akron Canton. Akron Canton resells local and long distance services to its residential

and business customers and First Communications has extensive experience in providing these services. The companies anticipate that customers will experience a seamless transition of service provider. Further, these customers will be sufficiently notified of the transaction and their rights. The contact for customers and Commission inquiries will be:

Mary Cegelski
First Communications LLC
3340 West Market Street
Akron, Ohio 44333
Tel: (330) 835-2272
Email: mcegelski@Firstcomm.com

In sum, grant of this Application will serve the public interest by furthering competition in the Ohio telecommunications market, as a result of the strengthened competitive position of First Communications.

IV. INFORMATION REQUIRED BY SECTION 63.24(e) OF THE COMMISSION'S RULES

In support of this Application, the Applicant submits the following information pursuant to Section 63.24(e) of the Commission's Rules, including the information requested in Section 63.18:

(a) Name, address and telephone number of Applicants:

First Communications, LLC
3340 West Market Street
Akron, OH 44333
Tel: (330) 835-2272

Akron Canton Communications, Inc.
2930 Edison Street, NW
Suite C
Uniontown, OH 44685
Tel: (330) 699-5699

(b) First Communications is a limited liability company organized under the laws of Ohio.

(c) Correspondence concerning this Application should be sent to:

Joseph R. Morris
V.P. Corporate Operations, General Counsel
First Communications, LLC
3340 W. Market Street
Akron, Ohio 44333
Tel: (330) 835-2472
Fax: (330) 835-2330
jmorris@Firstcomm.com

Karly E. Baraga
Kelley Drye & Warren LLP
1200-19th Street, N.W.
Suite 500
Washington, D.C. 20036
Tel: (202) 955-9869
Fax: (202) 955-9792
kbaraga@kelleydrye.com

(d) First Communications has authority to provide international services on a resale basis as granted in File No. ITC-ASG-20011001-00509. Akron Canton has authority to provide international services on a resale basis as granted on File No ITC-214-19990830-00545.
72

(h) Following consummation of the proposed transaction, the following entities will hold a 10 percent or greater equity interest in First Communications:

(1) McKinley:

McKinley Communications, LLC
134 Sixth Street S.W.
Canton, Ohio 44702
Citizenship: U.S.
Principal business: investment
Percent Equity: 51 percent

Marbel Investments, LLC holds an 80 percent ownership interest in and control of McKinley and thus will hold a 51 percent ownership interest in First Communications following consummation of the proposed transaction. Marbel is a U.S. citizen whose address is the same as McKinley and whose principal business is investments. Marbel is owned in equal shares by Marsh Belden, Timothy Belden, Susan Belden, and Katherine Belden. The Beldens are U.S. citizens whose principal business is investments and whose address is the same as McKinley. The Beldens govern Marbel by majority rule.

No other shareholder in McKinley holds a 10 percent or greater ownership interest in First Communications under the FCC's ownership attribution rules.

(2) First Energy:

First Energy Corp.
76 S. Main Street
Suite 1600
Akron, Ohio 44308
Citizenship: U.S.
Principal business: energy
Percent Equity: 31.85 percent

No shareholder in First Energy holds a 10 percent or greater ownership interest in First Communications under the FCC's ownership attribution rules.

(3) Boich:

Boich Investment Group, Ltd.
17 S. High Street
Suite 1220
Columbus, Ohio 43215-3413
Citizenship: U.S.
Principal business: coal
Percent Equity: 17.15 percent

Wayne Boich, Sr. holds 100 percent of the ownership interest in Boich and thus a 17.15 percent ownership interest in First Communications under the FCC's ownership attribution rules. Mr. Boich is a U.S. citizen whose principal business is coal and whose address is the same as the Boich Investment Group.

First Communications states that following consummation of the transaction, no officer or director of First Communications will also be an officer or director of any foreign carrier.

- (i) As evidenced by the signatures to this Application, First Communications certifies that (a) First Communications is not a foreign carrier and is not affiliated

with a foreign carrier, and (b) First Communications will not become a foreign carrier or become affiliated with a foreign carrier post-close.

- (j) As evidenced by the signatures to this Application, First Communications certifies that through its acquisition of the assets of Akron Canton it does not seek to provide international telecommunications services to any destination country where (a) First Communications is a foreign carrier; (ii) First Communications controls a foreign carrier; (iii) any entity that owns more than 25 percent of First Communications, or that controls First Communications, controls a foreign carrier in that country; or (iv) two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25 percent of First Communications and are parties to, or the beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States.
- (k) Not applicable.
- (l) Not applicable.
- (m) Not applicable.
- (n) As evidenced by the signatures to this Application, First Communications certifies that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route, and that First Communications will not enter into such agreements in the future.
- (o) As evidenced by the signatures to this Application, Applicant certifies that, pursuant to Sections 1.2001 through 1.2003 of the Commission's Rules, they are not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.
- (p) Applicant requests streamlined processing of this Application pursuant to Section 63.12 of the Commission's Rules, 47 C.F.R. § 63.12. This Application qualifies for streamlined treatment under Section 63.12 (c) of the Commission's Rules, because (i) First Communications is not affiliated with a dominant foreign carrier; (ii) First Communications will not become affiliated with any foreign carrier as a result of the proposed Transaction; and (iii) none of the other scenarios outlined in Section 63.12(c) of the Commission's Rules, 47 C.F.R. § 63.12, apply.

**V. INFORMATION REQUIRED BY SECTION 63.04(b) OF THE
COMMISSION'S RULES**

In accordance with the requirements of Section 63.04(b) of the Commission's Rules, the additional information required for the domestic Section 214 transfer of control application is provided in **Exhibit A**.

VI. CONCLUSION

Based on the foregoing, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by grant of this Application.

Respectfully submitted,



First Communications LLC
Steven A. Augustino
Karly E. Baraga
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Suite 500
Washington, D.C. 20036
Tel: (202) 955-9669
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saugustino@kelleydrye.com
kbaraga@kelleydrye.com

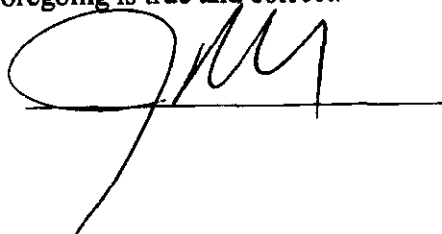
Its Attorneys

Date: June 10, 2005

VERIFICATION

I, Joseph R. Morris, am Vice President of Corporate Operations of First Communications LLC and am authorized to represent it and its affiliates, and to make this verification on their behalf. The statements in the foregoing document relating to this company and its affiliates, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.



Subscribed and sworn to before me this 9th day of
June 2005.


Notary Public

My Commission expires: _____

ERIC S. LOCKSHIN, Notary Public
Residence - Summit County
State Wide Jurisdiction, Ohio
My Commission Expires Feb. 25, 2007

LIST OF EXHIBITS

EXHIBIT A	Domestic Section 214 Transfer of Control Information
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EXHIBIT A

DOMESTIC SECTION 214 TRANSFER OF CONTROL INFORMATION

In accordance with the requirements of Section 63.04(b) of the Commission's Rules, 47 C.F.R. § 63.04, the Applicants provide the following information in support of their request.

63.04(b)(6): Description of the Transaction

The proposed transaction is described in Section II of the Application.

63.04(b)(7): Description of Geographic Service Area and Services in Each Area

A description of the geographic service areas and services provided in each area is described in Section I of the Application.

63.04(b)(8): Presumption of Non-Dominance and Qualification for Streamlining

This Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) of the Commission's Rules, 47 C.F.R. § 63.03(b)(2)(i). Following the consummation of the proposed Transaction, First Communications will have market share in the interstate, interexchange market of substantially less than 10 percent, and First Communications will provide competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier that is not party to the Transaction. Finally, neither First Communications nor Akron Canton nor any affiliate of either company is dominant with respect to any service it provides.

63.04(b)(9): Other Pending Commission Applications Concerning the Proposed Transaction

None.

63.04(b)(10): Special Considerations

None.

63.04(b)(11): Waiver Requests (If Any)

None.

63.04(b)(12): Public Interest Statement

The proposed transaction is in the public interest for the reasons detailed in
Section III of the Application.